IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4989 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOTIBHAI HEMABHAI BHIL MAJIRANA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SJ DAVE, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the Provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 7.4.2000 passed by the District Magistrate, Banaskantha at Palanpur, and he has

been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. Learned advocate for the petitioner has mainly argued that against the present petitioner four criminal cases have been registered. Over and above four witnesses have been recorded by P.I. (L.C.B.) Palanpur and same has been verified by Dy.Police Officer on 5.4.2000. Learned advocate for the petitioner has drawn my attention towards page no.22 of the grounds of detention that it has not been mentioned by the authority that the authority has verified the statements of the witnesses which allegedly have been recorded by the authority under Sec.9 of the Act. Learned AGP, Mr.S.J.Dave has fairly admitted the same.

4. It has been held in a judgment reported in 1993 (2) G.L.R. 1659 in the case of Kalidas Chandubhai Kahar Vs. State of Gujarat and others, more particularly at para 6 as under:

> "At the time of exercising the privilege under Sec.9(2) of PASA, a balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Art.22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. As against this, there is a provision under sec.9(2) carved out on the basis of Art.22(5) of the Constitution which provides that nothing in sub-sec. (1) shall require the

> authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other".

5. In the instant case, statements of the witnesses have been recorded on 21.3.2000, 27.3.2000 and 31.3.2000 and verification of the same has been done on 5.4.2000 and, therefore, right of making an effective representation by the detenu under Article 22(5) of the Constitution of India has been affected. Therefore, order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 7.4.2000 passed against the detenu is hereby quashed and set aside. The detenu Motibhai Hemabhai Bhil Majirana is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P. Dholakia, J.)

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